



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/146811

PRELIMINARY RECITALS

Pursuant to a petition filed January 23, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on February 21, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly reduced petitioner's FS for January, February and March 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Mary Hartung
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On or about December 10, 2012 petitioner's minor daughter [REDACTED] provided a signed statement to the agency that she had been living with her aunt [REDACTED] since February 2012 and provided her school records showing that [REDACTED]'s address was listed there as with her aunt.

3. On December 11, 2012 the agency issued a notice of decision to petitioner stating that effective January 1, 2013 his FS would decrease because [REDACTED] was not in his home.
4. [REDACTED] has not lived with her father since at least August 2012 and has been living with her aunt. He considers her a runaway. He provided court documents showing that as of February 20, 2013 the Milwaukee County Circuit Court had denied a petition by the aunt seeking guardianship as he was available to [REDACTED] as her parent. His testimony was that as of February 20, 2013, [REDACTED] was back in his home.

DISCUSSION

The first question to address is whether the agency acted correctly when it removed [REDACTED] from her father's case. It is true that the agency bases FS in part on the number of eligible persons in a household. FS regulations state that a household is composed of a "group of individuals who live together and customarily purchase food and prepare meals together for home consumption ." See 7 C.F.R. §273.1(a). The *FS Handbook* provides that households consist of all persons living in or temporarily absent from the same residence. See *FS Handbook*, §3.3.1.1. To qualify as temporarily absent the agency must:

Include in the household an individual temporarily absent from the household when the expected absence is no longer than 2 full consecutive calendar months past the month of departure. Some examples are absence due to illness or hospitalization, employment, and visits.

To be considered temporarily absent, one must meet ALL of the following conditions:

1. The individual must have resided with the food unit immediately before the absence,
2. The individual intends to return to the home, and the food unit must maintain the home for him/her,
3. If the absent person is a child, the caregiver of the absent child is responsible for the child's care and control when the child returns to the home, and
4. If the absent person is an adult, the adult must still be responsible for care and control of the child during their absence.

FS Handbook, §3.2.1.2. In this case, which involves a complex scenario where the aunt and [REDACTED], according to petitioner's testimony, have been living together continuously since at least August 2012. [REDACTED] continues to run away from petitioner's home, and the aunt has placed [REDACTED] in school under her care, as evidenced by the school records. Thus, [REDACTED] does not meet the temporary absence policy because she did not reside with her father "immediately before the absence" reported to the agency in December. In fact, she has not resided in his household since August, and was not living with him up until the February 20 court date.

Petitioner was concerned that the agency could change his FS case based on the information provided by [REDACTED]. As to that concern, I find that the agency acted correctly according to policy. When an agency receives a change, it is required to act upon it. *FS Handbook*, §6.1.3. Thus, when it received the change report from [REDACTED], it determined that she verified the change with adequate documentation when she submitted them. See *FS Handbook*, §6.1.3.2. The agency's policy for verifying household composition includes accepting any documents that reasonably meet the verification requirement and does not require a specific source of verification. See *FS Handbook*, §1.2.6. However, the policy does state that acceptable sources of verification may include written statements from a third party, which here would include the school records showing [REDACTED] living with her aunt. See *Id.* Further, the agency processed the change to allow for adequate negative notice to be issued to the petitioner, and made the change effective the first of the month following the month the verifications were received. See *FS Handbook*, §6.1.3.6; 7 CFR 273.12(c)(2)(i). Again, the change was made on December 10, the notice was sent on December 11, and petitioner appealed that notice on January 23, 2013.

Also, the agency did issue FS for [REDACTED] on her aunt's FS case. Thus, [REDACTED] did receive the FS that petitioner now wants returned to him. Wisconsin's policy is clear in requiring that the child cannot be a member of more than one FS group in the same month. The policy is found in the *FoodShare Wisconsin Handbook*, §3.4.1, available online at <http://www.emhandbooks.wi.gov/fsh/>, and provides the following guidance in these situations:

A person cannot be a member of more than 1 food unit and 1 FS group in the same month except residents of shelters for battered women and children.

Persons moving to Wisconsin from another state are not eligible to receive duplicate FS benefits. States typically issue benefits on either a calendar or fiscal month. A fiscal month cycle provides benefits from a date in one month to a corresponding date in the next month. California (Fresno), Massachusetts, Nevada and South Dakota issue on a fiscal month cycle. Illinois issues benefits by calendar month (first day through the last day of the month) and by fiscal month (16th through 15th). Wisconsin issues on a calendar month cycle.

FS Handbook, §3.4.1; see also 7 CFR 273.3(a). The evidence does not show that [REDACTED] was a resident of a shelter for battered women and children, but rather that she was living with her aunt in January and up until the February 20 court date.

The agency agreed at hearing that based on the information petitioner provided about the February 20 court date, that it would add [REDACTED] back on to petitioner's FS case. However, the agency budgets FS prospectively on a calendar month cycle. See *FS Handbook*, §§1.2.4 and 3.4.1. Thus, by the time of this hearing on February 21, [REDACTED]'s FS had been issued for February and March on her aunt's case. To that end, I will remand the matter so that the agency can add [REDACTED] back on to petitioner's case so that his April FS will be affected. I am also ordering that this case be "flagged" in the agency's CARES system so that the troubles petitioner faces with his sister and his daughter are accurately reflected when determining household composition, should that issue arise again.

CONCLUSIONS OF LAW

1. The agency correctly reduced petitioner's FS for January, February and March 2012.
2. That, based upon the agreement of the parties, petitioner's daughter will be added back to petitioner's case effective with April 2013's FS allotment, and no issue remains for determination by this administrative law judge.

THEREFORE, it is

ORDERED

That the matter is remanded to the agency with instructions to take the administrative steps necessary to (1) redetermine petitioner's FS effective April 1, 2013, by adding [REDACTED] back on his case, issue any FS accordingly, and issue a notice of decision regarding that action and (2) flag petitioner's case in the agency's CARES system so that the troubles petitioner faces with his sister and his daughter are accurately reflected when determining household composition, should that issue arise again. These actions shall be completed within 10 days of the date of this Decision. In all other respects, the petition herein is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

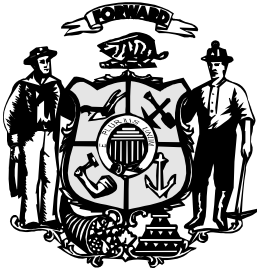
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 11th day of March, 2013

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 11, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability